

STROOCK & STROOCK & LAVAN LLP
 JULIA B. STRICKLAND (State Bar No. 083013)
 STEPHEN J. NEWMAN (State Bar No. 181570)
 2029 Century Park East, Suite 1800
 Los Angeles, California 90067-3086
 Telephone: 310-556-5800
 Facsimile: 310-556-5959
lacalendar@stroock.com

Attorneys for Defendants

CHASE BANK U.S.A., N.A., CHASE MANHATTAN BANK
 U.S.A., N.A. d.b.a. CHASE BANK U.S.A., N.A. and JPMORGAN
 CHASE & CO.

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

DAVID J. LEE and DANIEL R. LLOYD, as
 individuals and, on behalf of others similarly
 situated,

Plaintiffs,

vs.

CHASE MANHATTAN BANK U.S.A., N.A.,
 a Delaware corporation, CHASE
 MANHATTAN BANK U.S.A., N.A. d.b.a.
 CHASE BANK U.S.A., N.A., JPMORGAN
 CHASE & CO., a Delaware corporation; and
 DOES 1 through 100, inclusive,

Defendants.

Case No. CV-07-4732 MJJ

THE HON. MARTIN J. JENKINS

**DEFENDANTS' FURTHER STATEMENT
 OF ADDITIONAL AUTHORITY IN
 SUPPORT OF MOTION TO DISMISS**

DATE: January 29, 2008
TIME: 9:30 a.m.
CTRM: 11, 19th Floor
 450 Golden Gate Ave.
 San Francisco, CA 94102

Pursuant to Civil Local Rule 7-2(d), Defendants hereby advise the Court of further authority bearing on the Motion to Dismiss scheduled for hearing on January 29, 2008.

A. Lee v. Capital One

Recent proceedings before Judge Marilyn Patel, David J. Lee et al. v. Capital One Bank, Case No. CV-07-4599 (MHP) (N.D. Cal. Sep. 5, 2007), bear on the issues before the Court here.

In that case, plaintiffs, who are the same Plaintiffs here, challenge the legality of their cardmember agreements with Capital One. The gravamen of the complaint against Capital One is, just like here, that the agreements in question contained allegedly unconscionable arbitration

1 provisions. Plaintiffs argue the same legal theory of liability asserted in this action, namely, that
 2 they did not get the full value of their credit agreements with Capital One because the agreements
 3 contained the allegedly unconscionable arbitration provisions. Plaintiffs, however, never have
 4 invoked the arbitration provision. Nor do they identify any dispute related to charges on their
 5 credit cards.

6 At a case management conference, Judge Patel sua sponte raised the question of whether a
 7 “case or controversy” exists. (Ex. A, 3:15.) Suggesting strongly that Plaintiffs lack Article III
 8 standing, she asked, “Why don’t you wait until there is a dispute? Many of us hold credit cards for
 9 years, and a lot of people hold them for years and never have a dispute with their credit card
 10 company. . . . You’re creating a dispute where it seems there is none.” (Id. at 4:13-19.) Judge
 11 Patel encouraged the defendants to file a motion to dismiss or for judgment on the pleadings, and
 12 suggested that Plaintiffs’ counsel may be sanctioned under F.R.C.P. 11 if he persists in the
 13 litigation. (See id. at 5:7-20.) “If you are going to proceed on this, you proceed at your peril,”
 14 Judge Patel told Plaintiffs’ counsel. (Id. at 7:2-3.) “I’m very disturbed that this kind of lawsuit is
 15 proliferating around the courthouse here.” (Id. at 7:9-11.)

16 These same concerns should inform the Court in assessing Defendants’ pending Motion to
 17 Dismiss here. Defendants make the same standing arguments, against the same Plaintiffs. As
 18 recognized by Judge Patel, strong arguments exist in favor of dismissal because there is no actual
 19 case or controversy.

20 Dated: January 9, 2008

Respectfully submitted,

STROOCK & STROOCK & LAVAN LLP
 JULIA B. STRICKLAND
 STEPHEN J. NEWMAN

By: /s/ Stephen J. Newman
 Stephen J. Newman

Attorneys for Defendants
 CHASE BANK U.S.A., N.A., CHASE
 MANHATTAN BANK U.S.A., N.A. d.b.a. CHASE
 BANK U.S.A., N.A. and JPMORGAN CHASE &
 CO.